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Attorneys for Plaintiff  
 ITSON INC.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

ITSON INC., a Delaware corporation,

Plaintiff,

v.

BANDWIDTH.COM, INC., a Delaware  
 corporation,

Defendant.

Case No.

**COMPLAINT FOR TRADEMARK  
 INFRINGEMENT**

Plaintiff ItsOn Inc. ("ItsOn"), by its attorneys, for its Complaint against Defendant Bandwidth.com, Inc. d/b/a Republic Wireless ("Republic Wireless" or "Defendant") avers as follows:

**NATURE OF THE ACTION**

1. This is an action arising from Defendant's infringement of ItsOn's trademarks. ItsOn seeks relief pursuant to the Trademark Act of 1946, as amended (The Lanham Act, 15 U.S.C. § 1051 *et seq.*) (the "Lanham Act"), as more fully set forth herein. ItsOn seeks injunctive relief restraining Defendant's unlawful activities.

**JURISDICTION**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. section 1331 because this action alleges violations of a federal statute, the Lanham Act, 15 U.S.C. § 1114 and 1125(a).

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## VENUE

3. Venue lies in the Northern District of California pursuant to 28 U.S.C. sections 1391(b) and (c) because, on information and belief, Defendant does substantial business in this district, Defendant has systematic contacts with this district, Defendant has committed acts of infringement in this district, Defendant has caused injury in this district, and a substantial part of the events giving rise to the claims occurred in this District.

4. During all relevant times, Defendant has repeatedly, knowingly, and intentionally directed its infringing activities to this judicial district. While advertising, offering to sell, and selling its services in this judicial district, including but not limited to Defendant's use of ItsOn's trademark in connection with promoting and selling Defendant's wireless telecommunication services through its website, republicwireless.com, Defendant made systematic and continuous contacts with this judicial district, and has targeted its wrongful acts at ItsOn, which is headquartered in this judicial district.

## INTRADISTRICT ASSIGNMENT

5. Pursuant to Local Rule 3-2, Intellectual Property actions are assigned on a district-wide basis.

## PARTIES

6. ItsOn is a Delaware corporation with its principal place of business in Redwood City, California. At all relevant times alleged herein, ItsOn was, and is, in the business of providing and marketing wireless telecommunications services.

7. On information and belief, Defendant is a Delaware corporation with its principal place of business in Raleigh, North Carolina. On information and belief, Defendant advertises, promotes, offers for sale, and sells wireless telecommunications services throughout California and this district.

## ALLEGATIONS OF FACT

8. ItsOn owns a United States Federal Trademark Registration for ITSON, U.S. Reg. No. 4,365,011 (the "Registered Mark"), used in connection with telecommunications services, among other things. The Federal Trademark Application for ITSON was filed on December 14,

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2009. A true and correct copy of this registration is attached hereto as **Exhibit A**.

9. ItsOn also owns a family of common law trademarks including ITSON, which marks include pending trademark applications for ITSON (U.S. Ser. No. 77/820,894), ITSON (stylized design) (U.S. Ser. No. 77/950,562), ITSON MOBILE SMART SERVICES (U.S. Ser. No. 85/728,791), ITSON SMART SERVICES (U.S. Ser. No. 85/728,773) and ITSON MOBILE (U.S. Ser. No. 85/825,115).

10. Pursuant to 15 U.S.C. § 1057(c), ItsOn is entitled to a date of constructive use as of the filing date of the application of the Registered Mark, which is December 14, 2009.

11. ItsOn has used and continues to use the Registered Mark in interstate commerce, including in connection with the advertising, promoting, offering for sale, and selling of ItsOn's wireless telecommunications services in this District and throughout the United States. ItsOn's use has been continuous and exclusive.

12. The Registered Mark has become distinctive of ItsOn's goods and services in commerce, is associated with ItsOn, and identifies ItsOn as the source of advertising, information, and wireless telecommunications services offered in connection with the ITSON mark.

13. The Registered Mark is an important and valuable asset to ItsOn.

14. On information and belief, Defendant is a company that provides wireless telecommunications services.

15. On information and belief, Defendant has used and continues to use the mark IT'S ON (the "Infringing Mark") in association with its wireless telecommunications services. In particular, Defendant has used the Infringing Mark in connection with the promotion of and provision of Defendant's wireless telecommunications services, including displaying the mark on Defendant's website, republicwireless.com. A true and correct copy of Defendant's advertising containing the Infringing Mark is attached hereto as **Exhibit B**.

16. At no time has Defendant received permission from ItsOn to use the Infringing Mark.

17. Defendant, without authorization, has used the Infringing Mark in commerce to advertise Defendant's services on the Internet in a manner likely to confuse consumers as to its

1 association, affiliation, endorsement or sponsorship with or by ItsOn.

2 18. At no time has ItsOn had any association, affiliation or connection with Defendant,  
3 or endorsed Defendant's services, Defendant's website, or Defendant.

4 19. On information and belief, in using the Infringing Mark, Defendant has willfully  
5 and deliberately sought to profit from ItsOn's pre-established goodwill and reputation.

6 20. On information and belief, ItsOn has suffered significant harm to its reputation and  
7 goodwill due to Defendant's actions and will continue to suffer irreparable harm to its reputation  
8 and goodwill if Defendant's conduct is not enjoined.

9 **CLAIM FOR RELIEF**  
10 **(Federal Trademark Infringement – 15 U.S.C. §§ 1114 and 1125(a))**

11 21. ItsOn repeats and realleges, as if fully set forth, the allegations contained in  
12 paragraphs 1 through 20.

13 22. ItsOn is the owner of the Registered Mark for ITSON, U.S. Reg. No. 4,365,011.  
14 The registration is in full force and effect, and is enforceable.

15 23. ItsOn's use of the Registered Mark and its common law marks has been  
16 continuous, uninterrupted and, on information and belief, precedes Defendant's use of the  
17 Infringing Mark.

18 24. At all times relevant, Defendant exercised ownership or control over online  
19 advertising for its products and services, and knowingly cooperated in and/or induced  
20 encouraged, enabled or aided the infringement of ItsOn's trademark rights in online advertising  
21 for its products and services.

22 25. Defendant has infringed the Registered Mark and the common law marks by  
23 various acts, including, without limitation, the use of the Infringing Mark in interstate commerce  
24 in connection with the selling, offering for sale, promotion and advertising of its wireless  
25 telecommunications services.

26 26. Defendant's use of the Infringing Mark in connection with its wireless  
27 telecommunications services has not been authorized by ItsOn.

28 27. Defendant's use of the Infringing Mark in interstate commerce is likely to cause

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customer confusion or to cause mistake or to deceive as to the origin of the products and services offered and sold by Defendant, and as to their affiliation, connection, or association with, or endorsement or approval by, ItsOn.

28. Defendant's use of the Infringing Mark in connection with its wireless telecommunications services has been made notwithstanding ItsOn's prior established rights in the Registered Mark and on information and belief with both actual notice and constructive notice of ItsOn's federal registration rights under 15 U.S.C. § 1072.

29. Defendant's acts of trademark infringement have and are likely to continue to irreparably harm ItsOn's business, reputation and goodwill.

30. Defendant's actions in using the Infringing Mark in interstate commerce constitutes infringement of the Registered Mark in violation of 15 U.S.C. section 1114(1).

31. The foregoing acts of Defendant constitute common law trademark infringement, and false designation of association, affiliation, connection, endorsement and/or approval under 15 U.S.C. § 1125(a).

32. Upon information and belief, Defendant has engaged in such trademark infringement knowingly, willfully, deliberately, and in conscious disregard of ItsOn's rights, making this an exceptional case within the meaning of 15 U.S.C. § 1117.

33. Defendant's conduct described herein has caused and, if not enjoined, will continue to cause irreparable damage to ItsOn's rights in its mark, and to the business, reputation and goodwill of ItsOn, which cannot be adequately compensated solely by monetary damages. ItsOn's therefore has no adequate remedy at law and seeks permanent injunctive relief pursuant to 15 U.S.C. § 1116.

### **PRAYER**

WHEREFORE, ItsOn prays for judgment against Defendant as follows:

1. That a preliminary and permanent injunction issue restraining Defendant, its agents, employees, servants, licensees, affiliates, successors, assigns, any parent and subsidiary corporations, other representatives and all those in privity with or acting under their direction and/or pursuant to their control from directly and indirectly:

(a) Using the Infringing Mark in connection with the offering of its products or services, including its wireless telecommunications services; and

(b) From infringing the Registered Mark, or ItsOn's common law ITSON trademarks, or causing any likelihood of confusion, deception, or mistake as to the source, origin, sponsorship or association of Defendant's products with ItsOn or otherwise infringing the Registered Mark, or ItsOn's common law ITSON trademarks.

2. For its costs of bringing and prosecuting this action and any other remedy to which ItsOn may be entitled; and

3. For such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

ItsOn hereby demands a trial by jury of all issues so triable.

DATED: October 29, 2013

SHARTSIS FRIESE LLP

By: /s/ James P. Martin  
JAMES P. MARTIN

Attorneys for Plaintiff  
ITSON INC.

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